



Membership and  
Donor Development

April 10, 2002

Federal Trade Commission  
Washington, DC 20580

Re: Telemarketing Rulemaking – comment. FTC File No. R411001

Ladies and Gentlemen:

Thank you for extending the comment period on this topic from March 29, 2002 to April 15<sup>th</sup>, 2002.

Lautman & Company is a consulting firm providing membership and donor development services to several non-profit institutions, including the Marine Corps Heritage Center, Quantico, VA; AARP Andrus Foundation, Washington, DC; Citimeals on Wheels, NY, NY; The House of Ruth, Washington, DC; Central Park Conservancy, NY, NY; Hebrew Home of Greater Washington, DC; the Washington Animal Rescue League and the Smithsonian Institution's National Museum of the American Indian among others.

Each of these institutions raises funds from the general public. Many of them do so through direct mail solicitation, foundation and corporate grants, extremely large gifts from individuals, and from phone calls made by professional telemarketing organizations. In fact, in calendar 2001, the institutions named above raised nearly \$1 million net via the telephone.

As consultants we often recommend telemarketing as part of an overall strategic plan for clients, but we do not ourselves provide any telemarketing services nor do we contract telemarketing services. Our clients use telemarketing firms of their own choosing, contracting directly with them. That said, telemarketing helps us to reach the budget goals so the organizations can fulfill their charitable missions.

Because these proposed changes might seriously impact the ability of our clients to raise funds to fulfill their various missions, I would like to address several of the provisions of the changes, as I understand them. The new telephone rules will be burdensome, not only to the non-profit institutions we serve, but also to thousands of non-profits across the country.

### **Do Not Call List**

Because it can cost as much as \$1.00 per phone call (or more, in some instances), regardless of whether any revenue was generated for the charity, we encourage our clients to establish internal “Do Not Call” lists and/or databases and assist them in creating and maintaining such lists. It would be foolish for our clients (or for any non-profit) to waste money calling people who have already stated they do not wish to be called.

Further, because of state regulations that require our contracts to be registered with more than 27 states across the country, we insist that our clients work only with telemarketers who also register with the Attorneys General or other regulatory body. These legitimate, registered telemarketers also know that there is no percentage in calling people who do not wish to be called. Therefore, these firms use the Direct Marketing Association’s “Do Not Call” database, in addition to client maintained "Do Not Call" lists. The DMA list is frequently updated and maintained by professionals who are already in the database business.

Why should we ask the government to enter the arena of database development and maintenance for commercial purposes? Such a practice would be duplicative of DMA oversight, with less flexibility as outlined in the proposed rules. Why spend taxpayer money to duplicate a service that private industry has already created and manages well?

Another important issue with the “Do Not Call” list is that of prior relationship. As currently constructed, unless the non-profit obtains permission in writing, it could not contact an existing donor. People who already support a cause would thus be excluded from receiving phone calls from the charity of their choice. Since a prior relationship exists, and we have established that most charities already maintain internal “Do Not Call” lists, prohibiting non-profits from calling their own supporters would be inappropriate, unnecessary and costly.

### **Who Gets to Call Whom**

Because they are not covered by the FTC Sales Rules, long-distance services, politicians, and credit card companies cannot be prohibited from making phone calls for the purpose of soliciting money. Is there less fraud in telemarketing for long distance services than in charitable fundraising? Or is it simply that the media have focused on a few cases and made another mountain out of a molehill?

In the proposed rules, homeless shelters and hospitals couldn’t raise money using professional callers, but banks and phone companies could. This seems grossly unequal treatment, particularly at a time when we as a society are turning more and more to our non-profit institutions to fill the holes in the social safety net.

### **Undue Burden on the Non-Profits**

Some of the restrictions in the proposed regulations are difficult for charities to comply with while maintaining high level communications with their donors. The “Do Not Call” list would make it impossible for the National Japanese American Memorial Foundation, for

example, to call a member to remind her or him that her or his membership has recently expired and give her a simple method of showing her support for this project by renewing her membership over the phone – UNLESS the charity had prior written permission to call her. We cannot magically know – in advance – exactly who would need reminder phone calls. But how are we to obtain permission in writing if we can't call to ask for it?

Consider this: on any given mass appeal to donors, the average response rate is between 4 to 15% of those solicited. Even if requests for permission are mailed at the non-profit postal rates, to get just 5% response to a database of 10,000 donors could cost in the range of \$2,500 ... and only produce 500 callable names. Imagine what it would cost to write a sufficient number of times to donors to ask their permission to solicit them by phone – and to get them to respond in writing? This is an unreasonable expectation that could destroy small and local charities, simply because of the cost of getting permission.

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These are just some of the many concerns that we have regarding the proposed changes to the rules. We hope that you will take them into consideration during this public comment period, and will ask industry professionals to work together with you to create guidelines that are both practical and reasonable so that the public interest may be served on all levels.

**Most importantly, I hope you will change the regulations for the National “Do Not Call” list to provide a blanket exemption for pre-existing donor/member relationships. Lautman & Company strongly opposes the proposed “Do Not Call” list.**

I look forward to the continued hearing process on this question.

Sincerely,

Fran Jacobowitz, CFRE  
Executive Vice President

cc: Lee Cassidy, Direct Marketing Association Non-Profit Council  
Jerry Cerasale, Direct Marketing Association  
Monica Kim, Direct Mail Fundraising Association  
Paulette Maehara, Association of Fundraising Professionals  
Bob Tigner, Association of Direct Response Fund Raising Counsel  
Bob Wientzen, Direct Marketing Association